(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE JAN 0 9 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director denied the petition concluding that "the petitioner has not established eligibility for the benefit sought."

The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

As stated by the petitioner on appeal, petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

On appeal, the petitioner submitted a statement and additional evidence. On October 27, 2014, we issued a notice of intent to dismiss the appeal (NOID) in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The NOID advised the petitioner and counsel, in part, of information which was not consistent with a conclusion that the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of an advanced degree. On November 25, 2014, the petitioner submitted an additional statement and additional evidence in response. The petitioner also stated that it could not obtain the information we requested in our NOID within thirty days, but that it had requested the documents and information and would forward them to us upon receipt. To date, more than a month later, we have received nothing further.

For the reasons discussed below, upon review of the entire record, the petitioner has not established that the beneficiary is eligible for the classification sought or that the beneficiary meets the minimum job requirements listed on the ETA Form 9089.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

> (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1), (c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify "[t]hat the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type" and "[t]hat the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States." The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

II. ANALYSIS

In the instant petition, the petitioner does not claim, nor does the record establish, that the beneficiary has at least five years of experience following a U.S. baccalaureate degree or a foreign

equivalent degree. Therefore, in order to be eligible for the requested classification as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate.

The beneficiary's eligibility to practice in the United States is not at issue. Similarly, that the beneficiary possesses the necessary credentials for licensure is also not an issue. The petitioner must establish, however, that the beneficiary not only is a member of the professions holding an advanced degree, but also satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the job offer portion of the ETA Form 9089 to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

As stated in our NOID, the petitioner indicated on ETA Form 9089, Part H on line H.4 that the minimum education level for the position is a master's degree in physical therapy. The petitioner further indicated on line H.8 that an alternate combination of experience and education would not be acceptable. Accordingly, the petitioner defined the educational requirement for the position as a master's degree in physical therapy. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable. Thus, the petitioner must establish that the beneficiary meets the minimum educational requirement of the offered position, a U.S. master's degree in physical therapy or the foreign equivalent of that degree, by virtue of his degree alone.

As noted by the petitioner in its response to our NOID and the director's NOID, line H.14 includes the following: "Any suitable combination of education, training, or experience will be considered. Foreign degrees that are evaluated to be equivalent to U.S. [m]aster[']s degrees are acceptable." The petitioner states that "[t]his language should not be ignored in adjudicating the appeal." The petitioner does not, however, explain how the inclusion of the language changes the minimum requirements for the position of a U.S. master's degree in physical therapy or the foreign equivalent or how the beneficiary would qualify for the position as a result of this language.

In response to the director's NOID, [redacted] Director of Human Resources, Volunteer Services, [redacted] states that, regarding the language in H.14, the petitioner "has set out in as clear a fashion as possible…that a U[.]S[.] or foreign degree which is the equivalent to a master's degree is acceptable. ..[The petitioner] is seeking a candidate who has a [m]aster's [d]egree in Physical Therapy or the equivalent." Further, the petitioner asserts that the beneficiary qualifies for the position based upon the foreign equivalent of U.S. master's degree. Regardless, the language in H.14 appears in a regulatory requirement for employers who seek to permanently employ aliens

who qualify for offered positions only on the basis of the employers' alternate job requirements. 20 C.F.R. § 656.17(h)(4)(ii); *see also Matter of Kellogg*, 94-INA-465, 1998 WL 1270641 *5 (BALCA Feb. 2, 1998) (*en banc*) (holding that, where a beneficiary only potentially qualifies for an offered position based on alternate job requirements, the requirements are unlawfully tailored to the beneficiary's qualifications unless the employer indicated that "applicants with any suitable combination of education, training, or experience are acceptable"). As stated in 20 C.F.R. § 656.10(a)(3), [a]n employer seeking labor certification for an occupation listed on Schedule A must apply for a labor certification under this section and § 656.15." The petitioner has not demonstrated that 20 C.F.R. § 656.17(h)(4)(ii) is applicable to a Schedule A labor certification.

Moreover, such language does not necessarily lower the job requirements listed in H.4-H.8. Nevertheless, if the petitioner is asserting that the requirements for the position are less than a U.S. advanced degree or foreign equivalent degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience, than the position does not require an advanced degree professional as required under 8 C.F.R. § 204.5(k)(4). Regardless, the beneficiary must still meet the requirements for the classification sought.

The petition included a copy of the beneficiary's 1999 Bachelor of Science in Physical Therapy from in the Philippines, a duplicate "Report of Evaluation of Educational Credentials" (report) dated June 30, 2010 and a "Coursework Evaluation Checklist" (evaluation), dated May 9, 2006, from the

The report states that the beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and that the school "is comparable to a regionally accredited college or university in the U[nited] S[tates]." The report also states that the program's admission requirement is the equivalent of a diploma from a U.S. high school. According to the report, the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States, at the time of graduation" and that "the first professional degree…is the master's or higher."

In the submitted February 19, 2009 letter, Managing Director of Credentialing Services at , explained that, in 2001, the discontinued the accreditation of baccalaureate degree programs in the United States. Dr. further explained that U.S. accredited programs have converted to post-baccalaureate programs. Dr. concluded that the current first professional degree in the United States is at least a master's degree or higher. Our NOID stated:

> The fact that the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the beneficiary's bachelor's degree from the Philippines is equivalent to an advanced degree, which is defined by 8 C.F.R. § 204.5(k)(2) as any United States academic or professional degree or a foreign equivalent degree *above that of baccalaureate.* Furthermore, the beneficiary graduated on March 21, 1999. Based upon the above, the first professional degree in physical therapy *at the time of graduation*, as stated by in its report, was a bachelor's degree, not a master's degree.

The petitioner does not address this issue in its response to the NOID.

The report, signed by Dr. states that the beneficiary "meets the minimum requirements of fifty-four (54) semester credits in general education…[and] sixty-nine (69) semester credits in professional education." As stated in our NOID:

> The evaluation, in the summary at part iv, states that a minimum of fifty-four general education credits and sixty-nine professional education credits are required, but that a total of 150 minimum credits, not 123 (54 general education credits plus sixty-nine professional credits equals 123 total credits), are required. The evaluation also notes an additional 10.5 credits and completion of a fulltime internship. The evaluation states that "[t]his degree does satisfy the minimum number of 150 semester credits that is required for a U.S. master's degree." In addition to the discrepancy regarding the minimum required credits, the evaluation provides no basis for its statement that 150 semester credits is the minimum required for a U.S. master's degree in physical therapy.

The NOID also provided additional information regarding the minimum requirements for a U.S. master's degree in physical therapy. For example, according to page iv of ((January 2013) "[o]n average, DPT [Doctor of Physical Therapy] programs require 234 credits (116.4 preprofessional, 118.3 professional; 94.3 classroom/lab, 24 clinical education), which is 31.9 more credits than master's programs." Therefore, according to the average master's program in physical therapy requires 202.1 credits.

The petitioner asserts in response that "[t]he total credits required for the U[.]S[.] master[']s degree are 150; 123 of those 150 credits must be [g]eneral [e]ducation [c]redits and [p]rofessional [e]ducation [c]redits," and that "a student can take more than the 'minimum 54 or 69, and would do so to pick up the other 27 credits needed to reach 150." The petitioner, however, does not provide any evidence in its response to support the assertion that 150 semester credits is the minimum required for a U.S. master's degree in physical therapy.

The petitioner relies on the fact that is an "authorized credentialing organization," to assert that "the AAO is disqualifying and calling into question the veracity of " The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). The petitioner further states that our "decision to discredit the determination without cause…seems to be at odds with website." According to the information from the website submitted by the petitioner in response to our NOID, however, "[t]he educational credentials review is not accepted by USCIS for immigration purposes," but, rather, "is used primarily for licensure to practice physical therapy in the U.S." authority, which USCIS granted pursuant to 8 C.F.R. § 212.15(e)(3), does not extend to determining whether (1) the beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, as previously stated, a credentialing organization's verification of

the beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

Our NOID also advised the petitioner of information from the Electronic Database for Global Education (EDGE). According to EDGE, the Bachelor of Arts/Science/Commerce, etc. degree in the Philippines "represents attainment of a level of education comparable to a bachelor's degree in the United States." Under the credential description section, EDGE states that the bachelor's degree is "four to five years beyond the high school diploma (except Law which is an advanced degree as in the USA) with four being the most common length," but that "(Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five)." EDGE further states that the Master of Arts/Sciences degree in the Philippines "represents attainment of a level of education comparable to a master's degree in the United States." We also provided a copy of a letter from Director, AACRAO International Education Services, explaining the conclusions in EDGE and finding that it is the master's degree in physical therapy which is "comparable to the U[.]S[.] master's degree." We noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.[1] We provided the petitioner with copies of all of the relevant information.

The record also contains two additional evaluations, one from and one from Professor of New York. As discussed in our NOID, both evaluations state that the beneficiary's degree is equivalent to a Doctor of Physical Therapy degree. In addition, both evaluations incorrectly state that EDGE does not address the Filipino Bachelor of Science in Physical Therapy and rely, at least in part, on EDGE's findings for the Filipino Bachelor of Laws degree. Neither evaluation addresses the fact that the first professional degree in the United States at the time of the beneficiary's graduation in 1999 was a bachelor's degree. In response to our NOID, the petitioner indicates that it has requested additional information from Trustforte, but, as previously mentioned, we have not received any additional information to date.

EDGE's determination is that the five year physical therapy degree program in the Philippines is equivalent to an undergraduate level education in the United States, not an advanced degree. The decision in the United States to discontinue the baccalaureate degree in physical therapy does not create a presumption that a country that continues to offer a baccalaureate degree must have increased the level of that degree to above a baccalaureate. EDGE looks at the educational system of the country and the degree itself to make its determination.

The petitioner has not demonstrated that the information from EDGE is not applicable to the beneficiary's baccalaureate degree, especially since it addresses the five-year (including clinical

[1] *See Confluence Intern., Inc. v. Holder,* Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder,* No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

training) Bachelor of Physical Therapy degree offered in the Philippines. Furthermore, the petitioner has not demonstrated that the beneficiary's program is different from the other five year physical therapy programs EDGE references.

The record also contains a copy of a non-precedent AAO decision. The regulation at 8 C.F.R. § 103.3(c) provides that only precedent decisions of USCIS are binding on all its employees in the administration of the Act. The Departments of Homeland Security and Justice must designate and publish precedent decisions in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Furthermore, the decision involved a different occupation. In addition, the beneficiary in that case obtained his degree in a different country from the one in which the beneficiary obtained his degree. Finally, the unpublished decision did not involve conflicting information from EDGE or any other source. In fact, the information regarding the degree equivalency submitted was consistent with EDGE's findings. Therefore, the petitioner has not established that the non-precedent decision is relevant to the instant petition.

While USCIS has considered the findings of and Professor , USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. As stated in the director's decision and the AAO's NOID, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

In the instant petition, the report and evaluation found that the beneficiary's degree is both equivalent to the first professional degree at the time of graduation, which was a bachelor's degree, and that it "satisf[ies] the minimum number of 150 semester credits that is required for a U.S. master's degree." The petitioner did not address the inconsistency in the finding or provide any evidence that 150 semester credits is the minimum required for a U.S. master's degree in physical therapy as requested in our NOID. The petitioner also submitted two additional evaluations which both incorrectly stated that EDGE did not provide information regarding the five year bachelor of physical therapy degree and, instead, relied on a degree in a different field as a basis for their findings. Rather than address the inconsistencies and inaccuracies in the submitted evaluations, the petitioner asserts that we "did not take into account that the beneficiary obtained his degree in 1999." As previously stated, however, we addressed the fact that in 1999 the first professional degree in physical therapy was a bachelor's degree. While we agree that "requirements can change over the course of 15 years," the petitioner must still establish that the beneficiary's bachelor's degree in physical therapy, which consisted of four years of classroom time and ten months of clinical time, is the foreign equivalent of a U.S. master's degree in physical therapy.

The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). If the petitioner submits relevant and probative evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of

proof. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)). In the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089.

As such, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 or that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, the petitioner has not established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

III. CONCLUSION

The petitioner has not established that the beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the petitioner has not established that the beneficiary qualifies for immigrant classification as an advanced degree professional pursuant to section 203(b)(2) of the Act, and the implementing regulation at 8 C.F.R. § 204.5(k)(2). Accordingly, the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.